

BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

In re: the Properties Located at:

9314-9316 Bridgeport Way SW (File No. A0053);

and

9320-9330 Bridgeport Way SW (File No. A0054)

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND FINAL DECISION

Summary

This Decision addresses an appeal of two Findings and Orders issued for the dangerous building abatement of a building formerly occupied by QFC up until 2010 located at 9314-9316 Bridgeport Way SW and an adjoining strip mall building located at 9320 – 9330 Bridgeport Way SW. The appeal is sustained, but with the recognition that most of the abatement ordered by the Findings and Orders has already been commenced and to a large part completed by the Appellant.

The Appellant's abatement work, as well summarized in the Appellant's closing brief, goes a long way in addressing the issues raised in the Findings and Orders. Completion of that work should resolve most of the conditions found by this Decision to qualify the buildings as dangerous under the International Property Maintenance Code. There are two exceptions. The most significant of the two is a requirement that the buildings be subject to a full electrical inspection that includes an assessment of potential water damage to electrical circuitry and equipment located within the walls and roof of the buildings. City staff produced dozens of photographs showing severe water damage throughout the buildings resulting from years of heavy water infiltration, including water rusting through metal and infiltrating through walls and ceiling panels. As testified by one building inspector, during one of his site visits it was raining as hard in the building as outside of it. From this evidence it is reasonable to conclude that there is a high likelihood that electrical circuitry and equipment within the walls and roof of the buildings has been damaged by water or at least been exposed to water. State regulations require that all electrical components that have been exposed to water must be

1 replaced and/or reconditioned. The Appellant did a thorough electrical inspection of all electrical
2 components external to walls and the roof but presented no evidence that it had considered internal
3 components. Due to this lack of evidence, a full electrical inspection as required in the Findings and
Order is necessary to assure that the electrical issues are safely addressed.

4 The second exception to relying exclusively on the abatement work performed by the
Applicant is much more difficult to address. This Decision concludes that a limited structural
5 evaluation is necessary to address some of the structural issues identified by City staff. City staff
6 have dozens of years of experience in assessing and abating dangerous buildings. They strongly
believe that the subject buildings are unstable due to extensive superficial evidence structural
7 instability, such as wall cracking and separation and the previously identified water infiltration. The
Appellants presented the opinion of three structural engineers that the building is structurally sound.
8 City staff readily acknowledged that they would defer to the opinions of structural engineers on
issues of structural integrity.

9 Normally, the opinions of the Appellant's engineers would be determinative on structural
issues. However, City witnesses identified that the subject buildings are tilt up construction that were
10 built under regulations that were later found to be inadequate to protect such buildings from roof
collapse. Specifically, current regulations require roof assemblies to be firmly attached to wall
11 supports to avoid high roof loads from causing the roof to bear down on the walls, pushing them
outward and destabilizing them. As testified by one of the City's inspectors, the load on the roof of
12 the subject building has been doubled or tripled due to standing water, an inch and a half of dirt and
vegetation such as trees and blackberries growing in that dirt. City staff then presented evidence
13 showing that this load has caused the type of building separation that the new regulations were
designed to prevent – specifically separation of walls from the roof and between wall panels as well
14 as extensive cracking. Much of this cracking has occurred within the last four months.

15 The structural engineers presented by the Appellant were all well qualified to assess
dangerous building conditions related to structural issues. However, they did not address the load
16 bearing issue presented by staff. Two of the three structural engineers had completed their
investigations before the most recent wall cracking had occurred. The third engineer gave some
17 highly speculative reasoning on the cause of the cracking and wall separation. None of the engineers
gave any opinion on the impact of the added load to the roof on structural stability. Given these
18 conditions, compounded by the damage caused by extensive water infiltration, this Decision
concludes more likely than not that the structural stability of the roof has been impaired by the
19 increased roof load and requires a structural review to address the issue.

20 All other issues identified in the Findings and Orders have either already been abated or are
close to being fully abated by the Appellant. The corrective actions required in the Findings and
21 Orders has been revised to acknowledge the Appellant's work.

22 23 Exhibits

- 24 1. City Response to Administrative Appeal, including attachments.
25 2. City photographs, 200-282.
26 3. Notice of Appeal
4. Affidavit of Mr. Reeves
5. 9/4/19 Bargain and sale deed.

6. 9/18/19 Reeves to Emmert email regarding concrete core sample.
7. Phase I Environmental Analysis
8. JSE Labs 9/18/19 Asbestos Chain of Custody--QFC
9. JSE Labs 9/18/19 Asbestos Chain of Custody—Bagel Shop
10. 9/18/19 Email from Burgwin to Reeves re electrical work
11. 2/7/19 Wayne's Roofing Proposal
12. Pictures of brick work.
13. 8/12/19 Invoice for safety glass.
14. New Dimension 9/11/19 Maintenance contract.
15. Jeremiah Mitchell & Christian Ephrem 9/18/19 Invoice
16. Asphalt Company 9/19/19 estimate.
17. 9/18/19 Tabitha Stewart Email.
18. Terry Emmert Resume
19. Community Resume
20. Corporate Resume
21. Video clips of company projects
22. Email String Re City Purchase Offer 2/23/17-2/24/17
23. Email String Re City Purchase Offer 2/23/17
24. City's Closing Statement with Attachments (excluding Att. D Simmons)
25. Appellant Motion to Supplement with Attachments
26. Appellant Post Hearing Brief

Findings of Fact

Procedural:

1. Appellant. Emmert Lakewood Colonial Center LLC ("Appellant").
2. Hearing. The hearing examiner held a hearing on the appeal on September 19, 2019 at the City Council chambers of Lakewood City Hall. The record was left open through September 26, 2019 for closing statements. The City included several attachments to its closing statement that included new evidence. See Ex. 24. The Appellant objected to admission of the new evidence. All attachments were admitted except for a declaration from Roy Simmons as rebuttal evidence. Mr. Simmons' declaration, which identified a roof collapse of a tilt-up building, was not admitted as beyond scope of rebuttal since there was no evidence presented by Appellant contesting that tilt up roofs can collapse. The new evidence submitted by the City was admitted due to the change in ownership and resulting change in defense strategy by Appellant from the defense presented during the hearing before the Public Officer. During admission of documents in the appeal hearing before the examiner, the City reserved the right to present new evidence in response to exhibits presented by the Appellant. Post-hearing the Appellant also moved to supplement the record with documents evidencing that the City had engaged in offers to purchase the property. See Ex. 25. Since the evidence related to witness credibility, those documents were also admitted. The examiner agreed to re-open the hearing to give the parties an opportunity to cross examine witnesses pertaining to the new documentary evidence from both Appellant and City. The examiner also suggested an avenue of settlement. The parties investigated settlement, but on 10/9/19 stated they could not settle and thus requested the re-opened hearing. Since this Decision was due 10/13/19, the only available dates for a

re-opened hearing were 10/10/19 and 10/11/19. Due to the short notice, the examiner was not available, and the re-opened hearing was conducted by alternate examiner Emily Terrell on 10/9/19.

3. Appeal. This is an appeal of two Findings and Orders. One is for a vacated QFC building and the other is for a strip mall adjoining the QFC building. The QFC Findings and Order is File No. A0053. The strip mall Findings and Order is File No. A0054. An appeal to both Findings and Order was initially filed by WFC Lakewood Colonial, LLC. The QFC and strip mall properties were subsequently sold to Emmert Lakewood Colonial Center LLC on September 4, 2019, who subsequently took over the appeal.

Substantive:

3. Subject Properties. The QFC building, located at 9314-9316 Bridgeport Way SW, is on a lot that is over 200,000 square feet in area. The QFC building was constructed in 1978 and is 52,870 square feet in area. The building was vacated by QFC in 2010 and has been vacant ever since.

The strip mall building is located at 9320 - 9330 Bridgeport Way SW, Lakewood, WA. It is an approximately 68,920 square foot lot with an approximately 15,825 square foot commercial strip mall that was constructed in 1965 and 1978. The commercial structure has remained vacant since approximately 2012, except for spaces presently occupied by Cascade Bagel & Deli.

4. Administrative Complaints. On July 16, 2019 the City issued a Complaint and Notice of Hearing for the QFC building and a separate Complaint and Notice of Hearing ("Administrative Complaints") for the strip mall building that commenced the code enforcement action subject to this Decision.

5. Hearing Before Public Officer. Lakewood Assistant City Manager for Community and Economic Development David Bugher, acting as Public Officer for purposes of LMC 15.05.090, held a hearing on the Administrative Complaints on June 6, 2019. WFC Lakewood Colonial, LLC, the prior owners of the subject properties, were present and contested the Administrative Complaints.

6. Findings and Order. The Findings and Orders subject to this appeal determined that the subject properties have premises and structures that qualify as dangerous under the International Property Maintenance Code. The Order specified numerous abatement actions, including the repair and/or demolition of the QFC and strip mall buildings, giving the choice of repair or demolition to the property owner. The Findings and Order was issued as a result of the hearing identified in Finding of Fact No. 5.

7. Administrative Complaints Based Upon Detailed Inspections. On November 15, 2018, Code Enforcement Officer (CEO) Bill Mathies, Program Manager Jeff Gumm, Lakewood Police Officer Shawn Noble and Sargent Jeff Carroll, West Pierce Fire & Rescue Battalion Chief & Assistant Fire Marshall Michael Dobbs, and ABM District Manager Andrew Hanser inspected the subject properties for various code and building violations. The properties found to have extensive deterioration and water damage throughout the structure caused by prolonged water infiltration, active water leaks throughout the roof structure, improper and unpermitted electrical and plumbing

1 modification, exposed wiring, multiple doors and windows broken out, graffiti on both interior and
2 exterior surfaces, damage to an exterior support column, failing ceiling and wall surfaces, evidence of
3 squatter activity, and moldy conditions throughout. Additional concerns noted by Michael Dobbs of
4 West Pierce Fire & Rescue included the lack of adequate heating to prevent the fire sprinkler system
5 from freezing, and open junction boxes and open wiring splices. These findings were all
6 summarized in a detailed inspection report issued November 29, 2018 by the City of Lakewood. See
7 Ex. A to both Findings and Orders. An inspection report by the West Pierce Fire and Rescue was
8 also issued. Id.

9 In addition to the November 15, 2018 inspection, City knowledge of the conditions of the subject
10 building for preparing the Administrative Complaints was also supplemented with the observations of
11 Bill Simmons, a City of Lakewood Building Inspector, who has been visiting the property every two
12 to three months for the past three years in response to calls for police service responding to break ins,
13 broken windows and transients.

14 8. Inspections Made by Qualified and Credible City Staff. Most of the testimony supporting the
15 findings in the Administrative Complaints were supplied by Jeff Gumm and Roy Simmons. Both
16 individuals have extensive experience in assessing dangerous and nuisance conditions for buildings
17 and served as credible witnesses. Jeff Gumm, Lakewood Program Manager, has worked for
18 Lakewood for 18 years managing dangerous buildings, nuisances and rental housing. He's been a
19 licensed contractor for most of his life. He used to be a licensed building inspector. He's worked
20 with the property since his first inspection in mid-November 2018. Roy Simmons, City building
21 inspector, testified he has 35 years' experience in construction.

22 In post-hearing argument, the Appellant raised the fact that the City has made offers to purchase the
23 subject properties in the past and that the City Manager preferred demolition or removal of the
24 subject buildings over repairing them since the type of uses contemplated by the current owner are
25 not consistent with the economic development objectives of city planning documents for the subject
26 properties. From post-hearing testimony it's clear that the City was only trying to facilitate a sale to
the library district for library use of the property and that the City Manager's preferred use of the
property was commercial as opposed to public. As testified by both the City Manager and the City's
economic development manager, the City's primary concern is to make the property safe and
secondarily is to have the property used in a manner that is consistent with the City's economic
development and planning objectives. As testified by the economic development manager, the City
does work proactively with potential businesses to meet these objectives. From the testimony it is
apparent that although the City might not believe that the Appellant's development choices are best
for the subject properties, this position is not affecting the City's evaluation of the conditions of the
property. The Findings and Order are not requiring the Appellant to demolish the building, but rather
give the Appellant the choice of demolishing or repairing the building. The City witnesses are
holding the Appellant's engineers and other experts to a higher degree of analysis than the
Appellant's experts find necessary, but the City's position on this issue is consistent with how it has
pursued its other dangerous building abatement actions in the past. See, e.g. *Mayberry* and *Karwan*
dangerous building abatements.

1 9. Unsafe for Occupancy. The Administrative Complaints assert that the QFC and strip mall
2 buildings are unsafe for occupancy. The buildings are found unsafe for occupancy for two
3 reasons (1) danger of roof and/or wall collapse; and (2) danger of fire caused by water intrusion
into electrical system.

4 A. Danger of Roof and/or Wall Collapse. The danger of roof collapse is based upon three factors
5 (1) building construction under standards found inadequate to prevent roof collapse, (2)
6 unusually high roof loads caused by standing water, dirt and vegetation including trees, and
(3) extensive and recent wall cracking.

7 The testimony of Bill Simmons was most pertinent on the roof/wall stability issue. Mr.
8 Simmons identified that the QFC and strip mall buildings are concrete tilt up buildings.
9 Regulations regarding the connection between roof and walls have been increased since the
10 time the subject buildings were constructed due to high failure rates caused by roof instability.
11 Without the enhanced roof connections, high loads on the roof caused the roof to bear down
12 on the supporting walls, causing them to press outward and potentially collapse. From Mr.
13 Simmons multiple visits to the buildings he's concerned about the load that's developed on
14 the roofs. There's about an inch and a half of dirt on the roof with composting moss and trees
15 and blackberries growing on it. All that extra material is doubling or tripling the load on the
16 roof. Mr. Simmons believes that this extra load bearing down on the walls has caused the
17 walls to crack and move. The seams where wall panels are joined have moved over the last
18 year. There are two walls tipping out 1.5 to two inches from the top. There are pockets where
19 the wall seams are located with major concrete failure. There are exposed steel elements
holding the walls together that are to the point of failure. There's concrete failure. There's
multiple cracking through the brick stamped concrete as shown in numerous photographs
presented by Mr. Gumm for both the QFC and the strip mall buildings. Many of these cracks
have occurred in the last four months according to Mr. Gumm. Mr. Gindy, the City of
Lakewood Building Official, concurred in Mr. Simmons' testimony and testified that between
the time photographs were taken five months previous and his site visit on September 17,
2019, conditions were getting worse due to the loads on the roof caused by the standing water,
accumulation of debris and accumulation of equipment, all of which is creating a hazardous
condition.

20 Potentially compounding the load bearing issue raised by Mr. Simmons is the impact of water
21 infiltration on the walls and roof. Mr. Simmons testified that in an inspection a year ago he
22 found it raining inside the buildings as much as outside with water leaking into mechanical
23 equipment. Mr. Gumm presented numerous pictures depicting the impacts of water
24 infiltration to the interior and exterior walls and roof of both the QFC building and the strip
25 mall building during the initial appeal hearing. The photographs show active water leaks that
26 have caused failing ceiling and wall surfaces. Mr. Gumm noted that all units within the two
buildings had leaks except for the bagel shop. He noted that water on the roof is not getting
into the gutter system but rather is simply running through the roof into the buildings. He
showed leakage through a door that he estimated had to be based upon 5-10 years of water
infiltration as evidenced by holes that had rusted through metal. Photos showed falling
insulation that could no longer be supported due to water retention. He subsequently

1 presented a declaration, depicting photographs that in his opinion show water damage that has
2 caused wall cracking that extends all the way through the walls. See Ex. 24. Mr. Gumm
3 notes in the declaration that the photos show that the extent of water damage along these
4 cracks has increased in just the last four months. See Ex. 24, Gumm Dec., par. 11.

5 The Appellant has presented the testimony of three structural engineers, all of whom have
6 found the buildings to be structurally sound. Mr. Simmons and Mr. Gumm both testified that
7 they would defer to structural engineers on matters of structural integrity. However, the
8 structural engineers haven't shown that they considered the load bearing issues raised by
9 Mr. Simmons. The first inspection presented was by Mr. Jack Swardz, who's opinion was
10 submitted to the Public Officer as an affidavit. Mr. Swardz inspected the subject buildings on
11 March 29, 2019 and concluded that the buildings are not dangerous or unsafe. However, his
12 opinion was issued before the cracks appeared that were identified by staff as occurring over
13 the four months prior to the appeal hearing. Mr. Swardz did not address the issue raised by
14 Mr. Simmons, i.e. the high roof load of the building bearing down on tilt up construction.

15 Mark. Anderson was another Washington State licensed structural engineer who had
16 inspected the building. He wrote a report in 2013 concluding that the buildings were
17 structurally sound. His 2013 report was stamped with an engineering stamp and was based
18 upon FEMA protocol 547 methodology, which involved using a lift to inspect beams and
19 ceiling. In his 2013 review he observed cracks on the walls and between wall panels, which
20 he considered normal for buildings of that age. He noted that the exterior "brick walls" of the
21 building are stamped concrete so cracks look worse than they are. He concluded the building
22 was not dangerous in 2013. He had done a brief inspection within the week prior to his
23 appeal testimony in this abatement action and stated his opinion on the condition of the
24 building hadn't changed. He is currently working on a structural report that conforms to the
25 standards of the International Existing Building Code and he expects to have his report
26 completed within two to three weeks.

27 Jerry Reeves, the Appellant's third structural engineer, has been overlooking the new owner's
28 efforts to rehabilitate the building and to remove the building conditions that the City has
29 found to be dangerous or constitute a nuisance. Mr., Reeves also concluded that the building
30 was not dangerous. However, at hearing Mr. Reeves acknowledged that he hadn't been aware
31 that many cracks had recently appeared in just the last four months. He explained that the
32 wall cracks observed by staff are normal for a building of this age and that the cracks that
33 appeared over the last four months probably had always been there but were just more visible
34 recently due to the rain. As to the exterior wall separation, he noted there could be multiple
35 causes including that it was designed that way in the first place. For example, the
36 workmanship may not have been perfect and they put in a caulking strip and the caulking strip
37 gave out.

38 Overall, the testimony of the three structural engineers was very compelling and would
39 normally supersede any conflicting opinion of the City's building inspector and program
40 manager, who both readily conceded that they would defer to the opinions of structural
41 engineers on structural integrity. However, the fact that building code standards had to be

1 revised to prevent failures in tilt up buildings caused by high roof loads makes it reasonable
2 for the City to expect that the load issue will be given special scrutiny for buildings with high
3 roof loads that exhibit signs of potential failure. Yet, none of the three structural engineers
4 directly addressed the load bearing issue raised by Mr. Simmons. Mr. Swardz did his
5 assessment well before the cracks over the past four months appeared, Mr. Anderson's
6 assessment was done in 2013 with only a cursory updated review and Mr. Reeves wasn't
7 aware that the recent cracks had appeared until apprised of that fact during the appeal hearing.

8 Mr. Reeves made an indirect attempt to address the load bearing issue during the hearing, but
9 it was a highly speculative analysis that wasn't based upon any site-specific investigation.
10 Mr. Reeves had only been involved with the project for 14 days at that point, compared to the
11 two years of involvement by Mr. Simmons and Mr. Gumm. Given the photographic evidence
12 presented by Mr. Gumm, Mr. Reeve's explanation that the cracks weren't visible under
13 different weather conditions isn't very credible. Further, Mr. Reeve's speculation as to the
14 cause of the separation between wall panels and walls and roof was highly speculative. Given
15 the seriousness of the potential defect, rather than speculate that separation was caused by
16 poor caulking or the like, an actual investigation of the building to determine the cause would
17 have been much more compelling. There is certainly room for some reasonable disagreement
18 as to whether the buildings are dangerous given the expertise of the Appellant's three
19 engineers, but given that public safety is at stake in the final assessment, it is best to err on the
20 side of caution and conclude that the preponderance and substantial evidence presented is that
21 the building is in risk of collapse due to the excessive loads supported by the roof structure.

22 As to all other issues regarding structural stability, Mr. Reeves has done an excellent job in
23 rehabilitating the building to ensure that no portions of the building will fail due to structural
24 problems. Mr. Reeves has overseen the removal of water damaged ceiling tiles and the
25 Appellant has hired a roofing company to assess and fully repair the roof. See Ex. 11. As
26 testified by Mr. Reeves, the roof repair work was completed the day of the re-opened hearing
on October 10, 2019 and he hadn't had a chance to do a final inspection of it. Mr. Gumm
opined that elements such as water damaged ceiling tiles are just symptomatic of potentially
more serious internal water damage issues. However, as to structural integrity, the opinion of
Mr. Reeves is the more compelling on water damage issues. Mr. Reeves has seen all the
evidence presented by Mr. Gumm, including the evidence presented in his Ex. 24 declaration,
and still concludes that the building is structurally sound.

The Findings and Order also identified a damaged brick column as needing a structural
inspection, as the column had been hit by a car. Mr. Reeves had the bricks surrounding the
column removed for inspection. He determined that the metal piece that provides the
structural support had to be repaired, which he testified was a simple fix of nominal cost. Mr.
Reeves conclusions on the column are taken as verities, as they are uncontested by the City.

- B. Fire Danger Caused by Water Intrusion into Electrical System. As previously noted, the
second reason the subject buildings are unsafe to occupy are due to the fire hazard caused by
water intrusion into the electrical system. The photographs presented by Jeff Gumm show
extensive water damage and infiltration throughout all portions of both the QFC building and

1 the strip mall building. From these photographs it is determined that it is very likely that
2 some internal electrical components have been exposed to water infiltration as opined by Mr.
3 Gumm. In recognition of the danger inherent in such water exposure, WAC 296-46B-110
4 provides that any such circuitry or electrical equipment that has been exposed to water must be
replaced. The WAC authorizes some types of equipment to be reconditioned instead of
replaced. See WAC 296-46B-110(2)(b).

5 On June 7, 2019, Thompson Electrical Constructors Inc. ("TEC"), PO Box 45260, Tacoma,
6 WA, conducted an electrical inspection of the QFC and strip mall properties. The report
7 identified 54 items that required correction and all those items have been repaired by the
8 Appellant in addition to two additional electrical panels that were found in need of repair by
9 the contractor while addressing the 54 items. While the electrical inspection did note many
10 electrical hazards and water intrusion into electrical panels, the Findings and Order concluded
that the report focused primarily upon code and safety violations and did not include an
assessment of the electrical systems and any affect water infiltration may have had upon
electrical circuitry, conductors, or fixtures.

11 The Public Officer's assessment of the electrical report is supported by the record. The
12 electrical report, attached as Exhibit F to the City's response brief, is entitled an "exterior
13 investigation." In cross-examination, Mr. Reeves confirmed the "exterior" character of the
14 investigation by noting that a full electrical evaluation "would have" cost \$20,000, but it just
15 cost \$9,500 to repair all the electrical work. The adequacy of the "exterior" investigation is
16 even questionable, as the Appellant's electrical contractor subsequently emailed Appellant
that "[d]uring my repairs I found two panels that need to be replaced due to water leaks from
the roof." From this evidence it is clear that beyond checking for exterior water damage to
electrical circuitry and equipment, there was no full assessment of the potential for water
damage to interior circuitry and electrical equipment.

17 Mr. Swardz and Mr. Reeves believe the electrical systems as repaired to be safe, but neither
18 made any assurance that the electrical report prepared by the Appellant identified all interior
19 electrical circuitry and equipment that may have been exposed to water intrusion. As
20 structural engineers, Mr. Swardz and Mr. Reeves do not have any specific expertise in
21 electrical work. There was no testimony from any electrician that interior electrical
22 equipment and circuitry was safe and nothing in the Appellant's electrical report indicated
23 that any such conclusion had been reached. The extensive water intrusion identified by Mr.
24 Gumm and Mr. Simmons at hearing establishes that more likely than not some interior
circuitry and equipment has been exposed to water. WAC 296-46B.-110 establishes that as a
matter of public safety, any such circuitry and equipment must be replaced and/or
reconditioned. The only way to assure that all affected equipment has been properly replaced
and/or reconditioned is through a full electrical inspection as required by the Public Officer.

25 10. Harbor for Vagrants and criminal. The QFC and strip mall buildings have been neglected,
26 damaged, dilapidated, unsecured and abandoned to become a harbor for vagrants and criminals. As
noted in the Findings and Order, since January 1, 2018, City of Lakewood Police have responded to
calls and complaints a total of 96 times. As further noted in the Findings and Order, despite the

1 City's efforts, the subject properties have remained a nuisance due to ongoing squatters and vandal
2 activity, dumping of garbage and personal belongings, camping on site, storage and overnight
3 camping of recreational vehicles, the storage or dumping of junk/inoperable vehicles, and graffiti and
4 tagging of the structure. Bill Simmons, a City of Lakewood Building Inspector, who has been
5 visiting the property every two to three months for the past three years in response to calls for police
6 service responding to break ins, broken windows and transients. Mr. Gumm showed photographs of
7 two strip mall unit areas in which vagrants had resided without authorization. One of the vagrants
8 had utilized their living space to add graffiti to the walls. See Photo 209. Mr. Gumm testified about
9 broken windows from which such vagrants and criminals could access the buildings.

10 The Appellant has not contested the findings of the Public Officer regarding the vagrant/criminal
11 issue related to the property. Rather, the Appellant has taken effective measures to abate the
12 condition. The squatters have been removed from the property and the personal property they
13 brought in has been removed and disposed of. There had been some abandoned cars and trash in the
14 parking lots areas. Those cars have been removed and a contract signed for removal of future
15 offending vehicles. The trash was removed. The outside areas of the property have been generally
16 cleaned up and work to power wash, seal and restripe the parking lot is under contract and to be
17 completed soon. Exhibit 15. A landscaper has been retained to continue maintenance of the
18 existing landscaping, (Exhibit 14) and repairs to the irrigation system are underway. Benches around
19 the property have been repaired and repainted. Graffiti removal has been commenced and will be
20 continued. Exhibit 12.

21 The entry points have been sealed or removed, and the current tenant (who had apparently been
22 allowing others to enter) has been required to cease that practice. A big component of security is the
23 lighting. Mr. Reeves testified the lighting system is being repaired and the missing light bulbs
24 (in 40% of the fixtures) are being replaced. Another component of the security effort will simply be
25 the presence of people on the property, leasing agents, contractors, maintenance staff, suppliers, and
26 others. In the past, the building has attracted outsiders because it was dark and vacant. As life comes
back to the building and property, the security issues will dissipate. That is already evident. There is
some broken glass on the property. As noted at the hearing, the glass has been ordered and will be
installed shortly. Exhibit 13.

From the evidence presented, the preponderance and substantial evidence establishes that the
Appellant has taken reasonable and effective measures to fully abate the nuisance and
vagrancy/criminal issues associated with the property. The improvements and maintenance
conducted by the Appellant will be required to be completed and maintained to fully abate the
dangerous condition of the property.

11. Substantial risk of fire, building collapse or other threat to life and safety. The subject
buildings are found to be in substantial risk of collapse due to the structural issue identified in
Finding of Fact No. 9A and in substantial risk of fire due to the electrical issues identified in Finding
of Fact No. 9B.

The Findings and Orders also identify that on November 16, 2018, West Pierce Fire & Rescue issued
a Fire and Life Safety Inspection Report requiring the property owner provide adequate heating to

1 prevent freezing of the fire sprinkler system and to correct unsafe wiring conditions noted during
2 inspection. Those two issues have been fully abated. The City acknowledged at the hearing that
3 heaters had been installed that addressed the sprinkler issue. The unsafe wiring conditions identified
4 by West Pierce Fire & Rescue appear to be external conditions only and those have all been
addressed in the Appellants repair of the 54 electrical defects identified in Finding of Fact No. 9A.

5 The Findings and Order cites to failing ceiling tiles, insulation and soffits as well as the presence of
6 mold in support of its findings of substantial risk of collapse or other threat to life and safety. In its
7 post-hearing brief, the Appellant identifies that some of the stained ceiling tiles have already been
8 removed. Others will be cleaned up as appropriate. The insulation depicted in the various
photographs offered by the City will also be removed, reinstalled in place, or replaced once the roof
has been restored. Likewise, the Appellant assures that the soffits with water damage will be
replaced after the roofing has been completed.

9 The Findings and Order identified the presence of mold as a substantial risk to life and safety. At
10 hearing Mr. Reeves denied the presence of mold, but such mold was observed by Mr. Gumm and
11 photographs were provided of mold on fallen ceiling tiles. See Photo 205, 206. The removal of mold
will be required as an abatement measure.

12 The Findings and Order also asserts the presence of accumulations of combustible materials,
13 flammable or combustible waste or rubbish as well as plumbing modifications without permits. No
14 evidence was presented on garbage etc. within the building. Mr. Gumm testified that unauthorized
15 plumbing modifications were made throughout the QFC and strip mall buildings, but the evidence he
16 presented appears to be limited to photographs 221 and 222, which show waterlines installed without
17 a permit in the strip mall building. There was no evidence presented as to how these assertions, if
18 true, would adversely affect public health and safety. However, the Appellant did not dispute either
19 of these findings and testified that these types of issues have been or have been contracted to be
addressed. Uncontested findings in the Findings and Order, since they are based upon detailed
inspections conducted by qualified staff as determined in Findings of Fact 7 and 8, are taken as
verities. The uncontested testimony by the Appellant that plumbing and garbage etc. issues are being
resolved are also taken as verities. For these reasons, the plumbing and garbage etc. issues are
resolved in this Decision by simply requiring that the Appellant complete its abatement work.

20 12. Improper/Insufficient Electrical Connections. The QFC and strip mall properties are
21 determined to have electrical system modifications and damage that creates an improper and/or
22 insufficient electrical system that constitutes a threat to life or health for the reasons identified in
Finding of Fact No. 9B.

23 13. Assessed Value and Repair Costs. The 2019 assessed value of the QFC building is \$1,000
24 and the assessed value of the strip mall property is \$446,400. See Ex. B to City Response Brief. In
25 its written closing argument, the City asserts that the cost of repair exceeds 50% of total assessed
26 costs because the roof repair alone is \$224,975.00 for removal of shingles. See Ex. 11. However, as
best as can be ascertained from the record, the QFC and strip mall buildings are separate buildings.
They are located on separate parcels and beyond maybe a shared wall, there is nothing in the record
to suggest that the buildings are interconnected or could not be separately demolished. The roofs to

1 the QFC and strip mall buildings are completely separate since they are at different elevations. The
2 strip mall building only constitutes 23% of the combined area of the QFC and strip mall buildings.
3 Allocating 23% of roof repair costs to the strip mall building results in only \$51,737 in shingle
4 removal costs, far below 50% of the assessed value of the strip mall building. The record does not
5 establish that the total repairs necessary to remove the dangerous building condition of the strip mall
6 property exceeds 50% of the assessed value of the strip mall property. Indeed, that determination is
likely not possible until the results of the electrical and structural engineering analysis have been
completed and it can be reasonably known what repairs are in fact necessary to abate the building.
For the \$1,000 assessed value of the QFC building, of course, the 50% threshold is easily reached.

7 14. Mitigating Circumstances. The Appellant has made an extraordinary effort to abate the
8 property. It's reluctance to comply with the requirements of the Findings and Order, however, is
9 somewhat difficult to understand given that the additional investigation requested by the City would
10 only moderately add to the overall costs already incurred by the Appellant. However, the structural
11 engineering evaluation currently being prepared by Mr. Anderson appears to be on track to address
12 the structural issues of concern raised by the City. The only significant gap in needed information at
this point is a full electrical system evaluation. Given the significant progress made by the Appellant
in a short period of time and the fact that three structural engineers have found the building to be safe,
the Appellant will be given a reasonable amount of time to follow through on the abatement actions it
has instituted to address most of the issues raised in the Findings and Orders.

13 14 **Conclusions of Law**

15 1. Authority. The hearing examiner has authority to hear appeals and issue final decisions on
16 appeals of abatement orders issued pursuant to the IPMC. LMC 15A.05.090(H), amending IPMC 111,
17 provides that the hearing examiner shall hear appeals of the Findings and Order issued by the Building
Official for dangerous building abatements pursuant to enforcement of the IPMC.

18 In addition to IPMC violations, the Findings and Orders also assert the subject properties
19 qualify as nuisances under Chapter 8.16 LMC. The LMC is not clear about examiner authority over
20 administrative appeals over nuisance abatements under Chapter 8.16 LMC. There is in fact no
21 administrative appeal process identified for this chapter in the municipal code¹. LMC 8.16.050
22 authorizes the City Manager or designee to issue nuisance abatement orders but doesn't identify any
23 appeal process for such orders. Many of the City's LMC 8.16 claims have become moot since
issuance of the abatement order due to correction actions completed by the Appellant. In order to
avoid complicating the record with unauthorized modifications to the nuisance abatement order due to
lack of jurisdiction, this decision will only address the IPMC claims.

24 ¹ LMC 15.05.090(E) authorizes the Building Official to include any condition of the property in the LMC 15.05
25 Findings and Order that renders the property "unfit for human habitation or other use." Arguably, some of the
26 nuisance conditions identified in Chapter 8.16 LMC would qualify, although "unfit for human habitation or use" is a
term specifically used in the IPMC and could be construed as limited to the context of the IPMC. In any event, the
Administrative Complaint and resulting Finding and Order did not frame the Chapter 8.16 LMC violations as
Chapter 15.05 LMC violations.

1 2. Burden of Proof. The City has the burden of proof in establishing that the structures and
2 premises of the subject property qualify as dangerous buildings, structures and premises. The LMC
3 doesn't assign any burden of proof to these proceedings. There is very little case law on any
4 constitutional requirements pertaining to burden of proof, but the little that is available suggests that if
5 deprivation of a significant property interest is at stake, as a matter of procedural due process the City
6 has the burden of proof in proving that all applicable criteria are met. *Hardee v. State Dept. of Social*
7 *and Health Services*, 172 Wash.2d 1, 256 P.3d 339 (2011) (constitutional due process required that the
8 State prove by a preponderance of the evidence that its decision to revoke a home child health care
9 license should be upheld). Given code enforcement actions are subject to review under the Land Use
Petition Act, Chapter 36.70C RCW ("LUPA"), the substantial evidence standard along with
preponderance of evidence is applied to the City's burden of proof. See RCW 36.70C.030 (LUPA
exclusive judicial review of land use decisions); RCW 36.70C.020(2)(c)(land use decision defined to
include code enforcement of regulations pertaining to use and maintenance of land); RCW
36.70C.130(1)(c)(substantial evidence standard applies to LUPA review).

10 3. Review Criteria. As concluded in Conclusion of Law No. 1, the hearing examiner only has the
11 authority to consider appeals over the findings and orders made by the Public Officer based upon the
12 International Property Maintenance Code ("IPMC"). The only pertinent IPMC provision in this regard
13 is IPMC 108.1.5, which are the only IPMC provisions used by the Administrative Complaint to require
abatement. Applicable IPMC provisions are quoted below in italics and applied to the subject property
in associated conclusions of law.

14 **IPMC 108.1.5 Dangerous structure or premises.** *For the purpose of this code, any structure*
15 *or premises that has any or all the conditions or defects described below shall be considered*
16 *dangerous:*

17 **IPMC 108.1.5(6)** *The building or structure, or any portion thereof, is clearly unsafe for its use*
18 *and occupancy.*

19 4. For the reasons identified in Finding of Fact No. 9, the QFC and strip malls are found to be unsafe
20 for use and occupancy. It should be noted, however, that the unsafe structural condition is limited to
the loads on the roof caused by the accumulation of dirt and water. For this reason, the structural
evaluation required to abate the condition is limited to assessing the load issue.

21 Of arguable relevance to IPMC 108.1.5(6) is whether the Appellant has properly tested the QFC and
22 strip mall buildings for asbestos prior to abatement work. The presence of asbestos was not identified
23 in the Administrative Orders for Findings and Order subject to this Decision. It also is not arguably a
24 condition that would qualify the building as dangerous since the asbestos is a repair issue, not a pre-
25 existing condition subject to dangerous building abatement. Asbestos was only first raised as an
26 issue when the Appellant presented evidence of asbestos testing as part of its abatement regime and
the City found such testing inadequate under state law. The full extent of repairs that will be required
of the Applicant is unknown until the building permit evaluation and electrical evaluation required by
this Decision is completed. Without a clear understanding of what repairs are required, the amount of
potential disturbance to asbestos is unknown. There is insufficient information to identify how much

1 testing is necessary at this point. Further, the asbestos materials submitted by the City, Ex. 24,
2 identify that failure to conduct adequate asbestos testing is subject to civil penalties. For all these
3 reasons, this Decision does not address the asbestos issue. That is left to code enforcement as part of
the review process for the repairs conducted by the Appellant.

4 **IPMC 108.1.5(7)** *The building or structure is neglected, damaged, dilapidated, unsecured or*
5 *abandoned so as to become an attractive nuisance to children who might play in the building or*
6 *structure to their danger, becomes a harbor for vagrants, criminals or immoral persons, or enables*
persons to resort to the building or structure for committing a nuisance or an unlawful act.

7 5. The QFC and strip mall buildings have been a harbor to vagrants and criminals due to
8 neglected, dilapidated and unsecured conditions for the reasons identified in Finding of Fact No. 10.
9 The Appellants have made significant progress in abating this condition and the issue should be fully
abated upon completion of their efforts.

10 **IPMC 108.1.5(8)** *Any building or structure has been constructed, exists or is maintained in violation*
11 *of any specific requirement or prohibition applicable to such building or structure provided by*
12 *the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as*
to present either a substantial risk of fire, building collapse or any other threat to life and safety.

13 6. The QFC and strip mall buildings qualify as dangerous under IPMC 108.1.5(8) because of
14 substantial risk of fire. As determined in Finding of Fact No. 11, the QFC and strip mall buildings
15 are in substantial risk of both fire and building collapse. However, it's not apparent if the structural
16 issue is in violation of any code provision, as required by IPMC 108.1.5(8) so the collapse risk isn't
17 construed as qualifying the building as dangerous under IPMC 108.1.5(8). The risk of fire is due to
violation of WAC 296-46B-110(2)(b), which requires replacement and/or reconditioning of electrical
circuitry and equipment exposed to water to be replaced.

18 **IPMC 108.1.5(10)** *Any building or structure, because of lack of sufficient or proper fire-resistant*
19 *rated construction, fire protection systems, electrical system, fuel connections, mechanical system,*
plumbing system or other cause, is determined by the Public Officer to be a threat to life or health.

20 7. The QFC and strip mall buildings qualify as dangerous under IPMC 108.1.5(10) due to an
improper and insufficient electrical system for the reasons identified in Finding of Fact No. 12.

21 **LMC 15.05.090F: IPMC 107.2 Findings and Order.**

22 *A. If, after the required hearing, the Public Officer determines that the dwelling is dangerous or unfit*
23 *for human habitation, or building or structure or premises is unfit for other appropriate use, he/she*
24 *shall state in writing his/her findings of fact in support of such determination, and shall issue and*
25 *cause to be served upon the owners and parties in interest thereof, as provided in this section, and*
26 *shall post in a conspicuous place on the property, an order that (i) requires the owners and parties in*
interest, within the time specified in the order, to repair, alter, or improve such dwelling, building,
structure, or premises to render it fit for human habitation, or for other appropriate use, or to vacate
and close the dwelling, building, structure, or premises, if such course of action is deemed proper on

1 *the basis of the standards set forth in this section; or (ii) requires the owners and parties in interest,*
2 *within the time specified in the order, to remove or demolish such dwelling, building, structure, or*
3 *premises, if this course of action is deemed proper on the basis of those standards. If no appeal is filed,*
4 *a copy of such order shall be filed with the Pierce County Auditor.*

5 *B. In ordering the required course of action to be taken by the owner to abate the unfit or dangerous*
6 *structure, the Public Officer may order the structure or a portion thereof demolished and not repaired*
7 *under the following circumstances:*

8 *i. The structure is patently illegal with regard to building, zoning, or other regulations;*

9 *ii. The estimated cost to repair the structure or portion thereof is more than 50% of the value of the*
10 *structure or portion thereof; or,*

11 *iii. The estimated cost to repair the structure or portion thereof is less than 50% of the value and*
12 *repairing and/or securing the structure from entry would, nevertheless, cause or allow the structure to*
13 *remain a hazard or public nuisance.*

14 *The value of the structure shall be as determined by the Pierce County Assessor-Treasurer. In*
15 *estimating the cost of repairing the structure, the Public Officer may rely upon such cost estimating*
16 *publication or method the Building Official deems appropriate.*

17 8. LMC 15.05.090F as quoted above gives the Building Official wide discretion in
18 imposing the corrective actions necessary to abate dangerous building/premises conditions. The
19 conditions of the property are very poor, but the Appellant has undertaken a strong effort in addressing
20 the problems as outlined in Finding of Fact No. 14. Except for electrical and limited structural issues
21 identified in Finding of Fact No. 9, the Appellant's substantial effort in abating the problems with the
22 building should effectively correct the abatement problems identified in the Findings and Order. The
23 Appellant has made substantial progress in completing the maintenance and repair projects it has
24 initiated and completion of those actions should be construed as sufficient to eliminate the dangerous
25 building conditions except those identified in Finding of Fact No. 9.

26 The issue of demolition is not so easily resolved. Even though the City treats the QFC building
and the strip mall building as two different buildings for purposes of the Findings and Order, it treats
them as one building for purposes of applying the demolition criteria. It is only by doing so that the
City can justify requiring demolition at this time for the QFC building under the 50% demolition
standard of LMC 15.05.090F(B)(ii). Given that the QFC and strip mall buildings could each be
demolished separately and that they are on separate parcels, it is determined that LMC
15.05.090F(B)(ii) should be applied to each building individually instead of treating both buildings as
one consolidated structure.

As outlined in Finding of Fact No. 13, application of LMC 15.05.090F(B)(ii) leads to the
conclusion that the QFC can be ordered demolished at this time, but that the results of the required
structural and electrical reports needs to come in before it can be ascertained whether the 50% threshold
has been met for the strip mall building. Although the City could require demolition of the QFC
building under LMC 15.05.090F(B)(ii), the Findings and Order gives leaves the choice of demolition
or repair to the Appellant. The Findings and Order will be revised to provide that if the Appellant

elects to repair the buildings and fails to meet repair deadlines, at that point the City may determine whether demolition is required pursuant to the authority granted by LMC 15.05.090F(B)(ii), LMC 15.05.090(G) or LMC 15.05.090F(K). Whether or not that future decision should be left to administrative appeal shall be left to be resolved at the time that decision is made.

Decision

The two July 16, 2019 Findings and Order for File No. A0053 and A0054 are sustained, subject to the following revisions to the Order section (the Order sections to A0053 and A0054 are identical):

1. All owners and parties in interest, including but not limited to Emmert Lakewood Colonial Center LLC, are hereby ordered to clean up the Property and remove the nuisance and dangerous building conditions, as follows:

- Immediately cease the use and occupancy of the building(s) (with the exception of the spaces occupied by Cascade Bagel & Deli), as it/they has/have been declared dangerous. **The building(s) may be entered only for the purposes of inspection, removing contents, and for work directly associated with repairing it/them or preparing it/them for repair or demolition.**
- Remove all combustible materials, flammable or combustible waste or rubbish from unoccupied units.
- If repairing the building(s), except for additional requirements imposed by this Order, the repairs shall be completed as identified in the Appellant's post-hearing brief. The repairs identified in the post-hearing brief shall be completed no later than November 15, 2019.
- If repairing the building, a building evaluation report will need to be conducted by a professional or structural engineer licensed to perform such work in the State of Washington and submitted to the City of Lakewood Building Official. The building evaluation shall be in accordance with the 2015 International Existing Building Code (IEBC) Section 606.2, including seismic evaluation procedures specified in the International Building Code (IBC) or ASCE 41 per IEBC 301.1.4 to the extent applicable. The report shall at a minimum evaluate the structural load bearing issue identified in Finding of Fact No. 9A and is encouraged to address the overall structural integrity of the walls and roof of the QFC and strip mall buildings. The structural engineering report must be stamped, signed, and dated by a professional or structural engineer licensed to perform such work in the State of Washington. Repairs identified in the building evaluation shall be completed within a reasonable amount of time specified by the Public Official. The building evaluation shall be completed no later than November 15, 2019.
- If repairing the building(s), a full electrical evaluation shall be conducted of all circuitry, conductors, and fixtures that were or may have been exposed to water as provided in WAC 29-46B-110. Inspection of electrical to be conducted by the electrical purveyor or

jurisdiction responsible for electrical inspections and submitted to the City of Lakewood Building Official no later than November 15, 2019. Repairs identified in the electrical evaluation shall be completed within a reasonable amount of time specified by the Public Official.

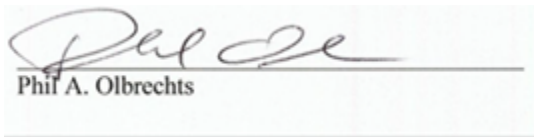
- The owner may elect to demolish the building instead of repairing it. Demolition shall be completed by December 31, 2019.
- Contact the City of Lakewood Building Official to schedule a joint walk thru of the Property with your professional or structural engineer and electrical purveyor or electrical inspector prior to evaluation of structure. No permits will be issued for repair of the building without said inspection. Should you choose to demolish the building, no such inspection shall be required.
- Ensure the Property is maintained in a secured condition until all repair or demolition and cleanup work is completed.
- Remove and legally dispose of all junk, trash, garbage, debris, inoperable or apparently inoperable vehicles, construction debris, tires, fallen fencing, overgrown vegetation, and similar conditions.
- Leave the property in a thoroughly clean, safe condition, free of debris, litter, holes, sharp drops, hazards, mold or other unsafe or nuisance conditions.
- All repairs shall conform to applicable development standards, including requirements for complete building permit applications and asbestos testing.

2. Demolition shall be conducted according to all applicable laws and regulations, including but not limited to asbestos survey and removal by properly certified and licensed contractor(s), capping of utilities in accordance with the requirements of each utility, and a demolition permit from the City of Lakewood. Demolition shall include removal and legal disposal of all parts and components of the structure, including footings, foundation, and slab(s), and all associated materials and debris. All other junk, scrap and salvage materials, inoperable or apparently inoperable vehicles, overgrown vegetation, and debris shall be removed from the property. All such materials shall be removed from the property and disposed in a legal manner. Depressions created by removal of foundations, footings or slabs are to be filled and graded level.

3. If the owner or other parties in interest fail to comply with the provisions of this order, the Public Officer may direct or cause such dwelling, building, structure, or premises to be removed or demolished to the extent authorized by LMC 15.05.090F(B)(ii), LMC 15.05.090(G) or LMC 15.05.090F(K). The Public Official is authorized to enter the property and buildings for inspection, testing, sampling, or other purposes preparatory to and in the conduct the removal or demolition, or other actions, to hire contractors as necessary to perform the work and to spend public funds to complete the work. The amount of the cost of such removal or demolition by the Public Officer shall be assessed against the real property.

DATED this 13th day of October, 2019.

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Phil A. Olbrechts

Hearing Examiner for Lakewood

Appeal Right: This is a final decision of the City of Lakewood Appealable to Superior Court as governed by the Land Use Petition Act, Chapter 36.70C RCW.